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Law, medicine and society in nineteenth-century Egypt

Khaled Fahmy

1 In the 1940s *shaykh* Hasanayn Muhammad Makhlûf, the chief *muftî* of Egypt, was asked to give his *fatwâ* on the following question : « According to the *shari'a* is it permitted to perform postmortem examination for scientific purposes or in criminal cases ? » After careful consideration, *shaykh* Makhlûf gave an affirmative answer to this question :

> Our opinion must be in accordance with the public good which agrees with the spirit of Islamic Law in each place and generation and which guarantees happiness in this world as well as in the world to come. Therefore we say : Whoever views postmortems as necessary, it is because in certain circumstances, such as when a person is accused of a crime against another and he is acquitted when the examination shows that the « victim » was not criminally attacked ; or when a person is criminally attacked, and then, in order to conceal the crime, he is thrown into a well, etc., postmortems are mandatory. Add to that the progress to science which accrues from postmortems, progress which humanity as a whole may enjoy and which may bring relief to many who almost died or suffered terrible pains so that they are like living dead. We say : the general picture as well as the details must lead to the conclusion that postmortems are permitted, since the benefits outweigh the disadvantages.[1]

2 Commenting on the timing of the *fatwâ,* Rispler-Chaim says that it was a typical twentieth-century issue that the *mufti* was responding to in this case. She makes the somewhat odd claim that « postmortems as an independent subject were not mentioned in the Islamic legal literature... because postmortems were not an issue in the legal systems of other monotheistic religions [!]. » More to the point, though, is her assumption that the urgency of the question was dictated by recent scientific discoveries : « Once postmortems became common practice throughout the world, Islamic law could not remain indifferent. The *mufti-s* of Islam were urged to give their opinion on the legitimacy of the practice, and their *fatwâ-s* have proven to be a useful tool for dealing with medical issues and other « new » questions, that is, questions which pre-twentieth-century *fiqh* did not recognize. »[2]

3 Although Rispler-Chaim's article deals mainly with the structure and content of Makhlûf's *fatwâ,* and not with the actual practice of postmortems in Egypt, her implicit assumption is that this *fatwâ* was a reaction to the « common practice of postmortems throughout the world, » a practice that presumably.hit Egypt only in the twentieth century as demonstrated by the absence of a *fatwâ* dealing with postmortems from an earlier period. Yet it is known that the issue of postmortem examination has been the subject of two *fatwâ-s* by Rashîd Rida dating from 1908 and 1910.In both *fatwâ-s* Rida opined that postmortem examinations were allowed since it was a « worldly matter *(min al-masâ'il al-dunyawiyya)...* and not a religious one (*al-mas'ala laysat 'ibâda). »*The *fiqhî p* rinciple alluded to was that of « casting off harm and attracting the beneficial *(dar'al-mafâsid wa jalb al-masâlih) ».*[3]The 1908 *fatwâ* referred explicitly to the health regulations that had been in place in Egypt and said that postmortem examination, which aimed at determining the cause of death, was considered a public good *(maslaha 'âmma)* and should take precedence over the principle of dignifying the dead *(takrîm al-mayyif).* [4]The 1910 *fatwâ* reiterated this line of thinking and said that the sunna of prompt burial could be dropped if there existed the slightest doubt in determining the occurrence of death. Referring to the likely possibility of burying people alive as a result of mistaking fainting for death, the *fatwâ* said that conducting a postmortem examination is permissible even if this meant that a male doctor examined the body of a dead woman.[5]

4 In order to document the gradual introduction of postmortem examination and dissection in the Egyptian legal and public health systems this paper will do so not by analyzing *fiqh* principles or *fatwâ* literature. Rather, it will show how postmortem examination, dissection and the general use of medicine for legal purposes, had been introduced in Egypt as early as the 1830s and before any *fatwâ* had been issued to legitimate the introduction of these novel practices. It will show how autopsy, i.e. the actual process of dissection and opening up of the human corpse, on theone hand, and external postmortem examination, on the other, were introduced in Egypt as a result of developments in the medical and legal systems. The paper specifically argues that the introduction of autopsy in Egypt had less to do with any developments in *fiqh* or any *muftis fatwâ* than with, first, the manner in which medical education accorded a central role to dissection and, second, with developments that the legal system had undergone in the period roughly from 1830 to 1880.

5 Besides explaining the reasons behind the introduction of autopsy by the state and the increasing role played by forensic medicine in legal procedure, this investigation also attempts to answer some important questions related to the « reception » of these novel and arguably disturbing practices to Egypt. Specifically, the questions raised below are the following : what was the reaction to autopsy of the lower classes in Cairo as well as in the countryside ? Assuming that the principle of « dignifying the dead is to bury them [promptly] » was as strongly upheld in, say, the 1860s as it was in the 1960s,[6] what then was the reaction of lower classes to the incessant attempts by the medical and legal authorities to lay claims on the bodies of their dead relatives and to conduct postmortem examinations and occasionally autopsies ? How did members of these lower classes react to the state's interference in all matters of death : outlawing burials within the confines of cities ; necessitating medical examination before burials ; preventing funerals from passing through the city ; forbidding the professional wailers from practicing their trade by wailing behind the hearse ; and, in suspicious cases, seizing the body to conduct an autopsy in state hospitals ?

6 Another set of questions that this paper addresses relates to the reaction of the *'ulamâ'* toautopsy and forensic medicine in general. As suggested above, the introduction of these novel practices was done before consulting the religious establishment and apparently without taking any steps to legitimate them along doctrinal lines. Although the jurists do not categorically rule out accepting the opinion of trustworthy doctors in adjudicating criminal cases[7], it is well known that the *sharî 'a* puts an inordinate emphasis on witnesses' testimony *(shahâda)* as the most important kind of evidence.[8] Rather than attempting to argue that autopsy was not contradictory to the *sharî'a,* the authorities went ahead and incorporated autopsy and forensic medicinein the legal system, and eventually medical evidence became a crucial source of *siyâsî,* i.e. *non-shar'î,* methods of proof. Accordingly, one of the central questions discussed below is the relationship between *shari'a* and *siyâsa,* a term that has a long history in Ottoman criminal and administrative law,[9] and a term that in nineteenth-century Egypt came to refer specifically to a criminal justice system which did not rely solely on the *shari'a* either in the realm of legislation or in the actual application of law in the courts. Most of the cases reviewed below dealt with issues about which the *sharî'a* is particularly vocal, e.g. pederasty, miscarriage and homicide. Following the introduction of autopsy to investigate suspicious homicides, where did the *shari'a* stand ? Were the *qâdi* courts competent to deal with such cases ? Were *fiqh* principles completely brushed aside ? What was the reaction of the *fuqahâ'* and the *'ulamâ'* to these new techniques ? How can one characterize the relationship between *shari'a* and *siyâsa* in the nineteenth-century Egyptian legal system ?

7 The legal material used below has all been gathered from the Egyptian National Archives. [10]Broadly speaking, these are of three different kinds. First, there are the records of cases investigated by the Cairo police *(dabtiyyat* Misr, *qalam da'âwâ).* These typically contain the minutes of the last stage of police investigations (it should be kept in mind that the police also functioned as a public prosecutor office in preparing a given case for a ruling by the relevant court). Second, there are the records of the criminal « courts, » called *majâlis* (sing, *majlis).* These legal bodies did not function as courts strictly speaking, since they admitted no witnesses, plaintiffs, or lawyers ; they reviewed cases solely on the basis of documents presented to them. The Egyptian National Archives contain a wide range of these documents which shed considerable light on how these « courts » functioned. Of most value is the minutes of the final rulings of these *majâlis,* which summarize the findings of the.police and mention the particular article(s) of the relevant law(s) according to which a ruling was passed. Finally, the Archives also contain a complete collection of the rulings of *majlis al-ahâm,* the highest court in the land, which functioned both as a supreme administrative court and a court of cassation. These records shed light on how the whole legal system worked, on the relationship between *shari'a* and *siyâsa,* on the manner in which sentences were appealed and rulings challenged, and on the relationship between different courts. In addition to these legal documents, sources used here also include a wide variety of medical material, the most important of which are reports of autopsies that had been conducted in the main hospital, Qasr al-'Aynî, and which were then sent to the police to help with their investigations in suspicious homicides. By combining these different types of legal and medical material, it is possible to arrive ats some understanding not only of how laws were enacted and revised, but also of how they were implemented by judges and understood by the general public.

Developments in the legal system

8 Before turning to the analysis of the role played by forensic medicine in the legal system, it is necessary to examine what paved the way for its introduction andwhat made its widespread use easy. If one takes forensic medicine to mean « the application of medical knowledge in the broadest sense to help solve legal problems or satisfy legal requirements... [and to] include...all manner of clinical and post-mortem investigations carried out by surgeons, midwives and physicians on the instruction of legal officers or tribunals, »[11] then it is easy to see how this new tool enabled the legal authorities to control crime in a much more effective way than before. Long before the creation of the Mixed Courts in 1876, the legislative and administrative activities of Mehmed Ali and his descendants point to a complex and highly flexible legal environment that aimed precisely at more effective control of crime and a tighter grip over the population.[12]

9 The attempt to found a state of « law and order » in Egypt, one in which « a Christian's head is as safe on his shoulders in Cairo as it is in London, and his purse safer in his pocket, »[13]was one tool that Mehmed Ali used to entice Europe to support his bid for independence from the Ottoman Empire. As early as September 1829, when he passed his first penal legislation[14]and much before he first expressed his desire for official independence from the Ottoman Empire in the late 1830s, Mehmed Ali was already using law, and penal law in particular, to carve out an independent realm for himself in which his laws and his bureaucracy would reign supreme at the expense of the Sultan's. This concern with penal legislation continued in repeated revisions and additions to this early law ;[15]the gradual elaboration of legal procedures[16] ; the establishment of a police force in Cairo and Alexandria (and, subsequently, in other urban centers) that functioned both as an investigating authority and as a prototype of a public prosecutor's office (akin to the *parquet* system in modern French law)[17] ;and the increased use in the *majâlis* of new kinds of evidence that were not usually admitted by the *qâdî* courts, chief among these being autopsy reports.

10 Behind this effusive legislative activity lies a concern with expanding the authority of the *vali* of Egypt, nominally an Ottoman governor, over that of the Ottoman sultan himself. The particular usage of the bodies of convicted criminals as a terrain on which Egypt'sbid for independence would be fought out was pursued with equal diligence by Mehmed Ali's successor, 'Abbâs Hilmî I. Soon after securing the position of the *vali* of Egypt in 1848, 'Abbâs vehemently rejected the attempts of Sultan Abdùl-Mecid to have convicted murders punished after referring such cases to Istanbul. Particularly at issue was the question of who had the right to carry out the execution *(qisâs)* of convicted murderers : the sultan or the *vali ?* Arguing that 'Abbâs's insistence on punishing murders in Egypt amounted to a violation of *shari'a* —seen as reserving the right to execute criminals to the sultan and his appointed *qâdî-s*— the Ottoman sultan, Abdùl-Mecid, and his Sublime Porte insisted that any murderer who committed a crime in Egypt and was condemned according to the *shari'a* hadto have his death sentence carried out by the sultan in Istanbul. The Egyptian *vali* countered saying that sending offenders to Istanbul to be executed would imply diminishing the *vali's* authority in the eyes of his subjects, especially the bedouins of the Sa'îd and the eastern desert who, 'Abbâs explained, would see this as a delay in what had been a prompt execution of justice and thus would resort to the rebellious habits of earlier times. To support his case, 'Abbâs argued that criminal

legislation in Egypt had been initiated by his grandfather and that a considerable degree of peace and security reigned in the country thanks to the firm and strict implementation of thelaw.[18]

11 'Abbâs decreed that homicide cases, both those that were to be adjudicated according to the *sharî'a* and those adjudicated by modern methods of *siyâsa,* were to be reviewed by the *majlis al-ahkâm.*[19]After reviewing the case, the m*ajlis al-ahkâm* was to forward the verdict to the *majlis al-khusûsî,* the Privy Council, for ratification.[20] An examination of cases reviewed by the *majlis al-ahkâm* indicates that the stipulations that had been set down as an appendix to *al-qânûn al-sultânî* were indeed followed to the letter. According to these instructions, a case of suspected homicide should first be investigated by the provincial administration *(mudîriyya),* and then forwarded to the local provincial court *(majlis al-iqlîm),* where it was to be studied in the presence of the local muftî and members of the court. Next, the *shari'a* sentence *(al-i'lâm al-shar'î),* together with the minutes of the ruling, should be sent to the *majlisal-ahkâm for* inspection and approval *(tasdiq).* Finally, the ruling should be sent to the *majlis al-khusûsî,* which would send it to the viceroy for final approval.[21]

Developments in the medical establishment

12 As this brief review indicates, the use of siyâsî methods of proof had already been vouchsafed in the letter of the law itself during the first half of the nineteenth century. The education of medical practitioners was the other important factor that contributed to the significant position that legal medicine, as the most effective *siyâsî* method of proof, came to play beginning in the early 1850s. A brief description of the Egyptian health administration is crucial to understanding this important role.

13 Founded in the late 1820s, primarily to cater to Mehmed Ali's large army, the medical establishment had from its inception a strong connection to the state. For at least three generations, Egyptian doctors were official employees working in state hospitals and public clinics, or stationed in key government institutions, e.g. urban police stations and rural provincial headquarters. Most of their duties were connected to matters of public health, although private medical practice was not ruled out. A closer look at the structure of the public health services gives a good idea of the duties and responsibilities of these medical practitioners.

14 The connection between law and medicine was intimate and visible even at the level of academic training. Both the Qasr al-'Aynî Medical School (founded in 1827) and the School of Midwives (founded in 1834)[22]helped to prepare male and female doctors, like their contemporary counterparts in Scotland, not only « to become more proficient in the healing arts, but... [also] to provide the courts and local magistrates with informed advice on the material facts of crime and squalor and the best means of dealing with them. »[23] Because dissection was an important part of the medical school curriculum and was practiced from the inception of medical teaching,[24]students were well prepared to perform autopsies. Upon graduation, those students who were lucky to join the Qasr al-'Aynî staff routinely conducted autopsies.[25] To prepare medical students for their future tasks as coroners, a number of books in the field of forensic medicine, especially autopsy, were translated into Arabic ; others were specially commissioned and published in the government press at Bûlâq.[26]

15 The connection between law and medicine also manifested itself in everyday practice. Placed under the jurisdiction of the General Health Board in Alexandria *(majlis umûm al-sihha),* numerous male and female physicians, nurses, and pharmacists were entrusted with wide-ranging duties.[27]Besides the obvious task of treating and attending to the sick in hospitals, these health officials were also responsible for conducting a nationwide vaccination program against smallpox for all children (a program that seems to have been quite successful), for imposing strict quarantine regulations during epidemics, especially cholera and plague, and for overseeing all sanitary operations in an effort to guarantee the removal of every cause of ill health, including street cleaning, garbage collection, refuse disposal, and the filling in of marshes and ponds. All persons engaged in any commercial activities that might have a connection to public health were closely supervised : food vendors, bakers, butchers, druggists, and herbalists.[28] Slaughterhouses were moved to the fringes of cities and minute attention was paid to their cleanliness.[29] Tanneries were also relocated outside the cities.[30] Most impressive was the stipulation that all newborn babies and all deaths were to be recorded daily by male and female physicians, by barbers and midwives and by undertakers[31]A general health blueprint issued in 1872 reiterated a previous order that corpses were to be buried outside the cities and only after they had been examined by a physician. The physician was to issue a burial certificate that specified the name, sex, and age of the deceased, in addition to the cause of death, the name of the doctor who had treated him/her, the name of the pharmacy from which any medicine was issued, as well as any suspicious signs detected on the body. [32]

16 The most important duty performed by these medical practitioners, however, was undoubtedly conducting postmortem examinations. The 1872 blueprint that was introduced to revise the health organization of the city of Cairo gave the following reasons when asking for postmortem examinations : « the need to know if there is any outbreak of epidemics, to check the effectiveness of health measures, [and to] gather vital statistics of the whole city. »[33]However, the need to determine homicide cases was one of the most important reasons for insisting on these measures. It is not known exactly when this important function was instituted, but by the early 1850s strict orders were issued forbidding the burial of corpses within the confines of the city.[34]Regulations were issued to impress the importance of this matter upon the physicians of the quarters *(hukamâ' al-athmân),* warning them against any delays in conducting postmortem examinations, and reminding them that, on finding any suspicious cases, they had to write to the Central Bureau of Health Inspection so that a second examination could be conducted,[35]which most often took the form of an autopsy at Qasr al-'Aynî Hospital.

17 By the early 1850, the close connection between medicine and the law was firmly established. The medical establishment had been organized firmly enough to undertake the crucial legal role that it would subsequently play. At the same time, forensic medicine had also been incorporated in the legal structure and had assumed an important role as the prime *siyâsî m*ethod of proof in the criminal justice system. In order to understand the specific role played by forensic medicine and specifically autopsy in the evolving criminal system, the investigation now turns to contemporary cases, both those investigated by the police and those reviewed by the *majâlis.* These cases will be discussed not only to demonstrate the manner in which they were investigated and the way in which a ruling was reached, but also to address the general questions raised above, namely the reaction of the lower classes and of the *"ulamâ"* toautopsy and to forensic medicine in general.

The role of forensic medicine in the criminal justice system

18 Forensic medicine, beginning in the early 1850s, had gradually come to occupy an important role in criminal investigations. On receiving news of the death of anyone in the countryside, the local barber-surgeon *(hallâq)* or midwife *(dâya)* would be dispatched to conduct an external examination. On finding any suspicious signs on the body, the provincial *hakîm* or *hakîma,* as the case might be, would be summoned to give a second opinion. When this second investigation proved inconclusive, the body would be sent to the provincial hospital for a full autopsy where the body would be dissected and a report would be written by an « autopsy committee » (*jam'iyya tashrîhiyya*). In Cairo, the preliminary investigation was conducted by the resident doctor (*hakîm/hakîmat al-thumn*, literally the « neighborhood doctor »). If this preliminary investigation was deemed inconclusive, the hakim or hakîma of the Cairo Police Headquarters (*hakîm/hakîmat al-dabtiyya*) would be summoned. Finally, it was to Qasr al-'Aynî Hospital that bodies were sent for an autopsy.

19 As an example of how this procedure was implemented, consider the following case of the death of a prostitute named Hasna from Cairo. In the evening of a cruel day in April 1861, Surûr, a slave, entered into the brothel of a woman named Nafîsa, the wife of Hasan the Miller (al-Tahhân). He found his concubine (*rafîqatahu),* Hasna, who used to frequent the brothel *(karakhâna)* and work there as a prostitute, lying on the floor apparently unconscious. He initially thought she was drunk and tried to revive her, but soon found out that she was dead. Before he could do anything he found himself handcuffed and put under arrest by a soldier whom Nafîsa, the madame of the brothel, had earlier summoned from the local police station. Nafîsa, in her testimony in front of the Cairo police commissioner, disputed Surûr's version and claimed that he had, in fact, stormed into her brothel carrying the body of the dead Hasna on his shoulders together with a friend of his. She then told him to leave her brothel as he had entered it, stating that she did not want any troubles in her house. When he refused, she summoned the police.

20 Surûr's friend, 'Umar al-Farrâsh was summoned to the police station to give his testimony and what he said was particularly damning for Surûr. He said that the slave had met his concubine in the late afternoon of that day in front of the mosque of Shaykh al-'Agamî. Surûr had been enraged because he had been looking for Hasna all day only to be told that she was in the company of an unnamed Copt. When he confronted Hasna, she did not deny the fact and added that this was none of his business and that the Copt could buy two slaves like him. Surûr, in turn, lost his temper and lifted Hasna from the neck until she dropped dead. 'Umar, who is the only eyewitness of what apparently had occured, then reprimanded his friend reminding him that one should not treat one's concubine in this manner. Realizing that she was breathless, Surûr and another man, Farag 'Ammâr, who used to work in a neighboring café, then carried the body and marched with it in front of everyone *('alâ ru'ûs al-ashhâd,* as the police commissioner said « to his amazement ») until they reached Nafîsa's brothel.

21 Although Surûr vehemently denied these allegations, he was eventually charged with manslaughter. What helped in securing a conviction were the above-mentioned testimonies in addition to that of his master who said that Surûr, on that day, had been

drunk and that he had heard from a young boy that he had attacked him as well. His relationship with Hasna was also established, as was his frequentvisits to her in the brothel. The most significant evidence, however, was the autopsy report which proved decisive in nailing the act on him. Initially, the external postmortem examination conducted by the local *hakîma* found no suspicious signs of strangling around the neck. In Qasr al-'Aynî, however, the autopsy report was conclusive : « As a result of an autopsy conducted on Hasna's body, it was found that the brain showed signs of suffocation. Her tonsils, moreover, were inflamed and signs of alcohol could be detected in her stomach. » The police, therefore, reasoned that despite the lack of external evidence on Hasna's body to corroborate the eyewitness account of Surûr strangling Hasna, the fact that she had apparently been drunk and that she had an inflammation in her tonsils explained how death occurred quickly and with no struggle and, therefore, why no signs on her neck were found. Accordingly, Surûr was sentenced to prison with hard labor for one year.[36]

22 The use of medicine to investigate suspicious homicide cases became standard procedure by the late 1850s. Authorities also regularly resorted to medicine in the army to ascertain whether the cases at hand were homicides, accidental deaths or suicides. A young private by the name of 'Alt 'Abd al-Salâm had recently been sent to the Qasr al-Nîl Barracks in Cairo. On a certain night, soon after he had been sent there and while he was on sentry duty *(ghafar),* he desperately wanted to relieve himself. His more experienced colleagues told him, though, that he could not leave his night duty on the second floor of one of the buildings of the Barracks ; instead, he was advised to find a nearby earthenware pot *(ballâs)* and to use it, rather than go to the latrine downstairs. While he was looking for the *ballâs* in the landing of the staircase where he was serving, and because the place was dark and unfamiliar to him, he fell from the second floor, crashed on the floor, and the following day died in the regimental hospital. Because there was a suspicion of homicide, the guards on duty were questioned and they gave the aforementioned testimony. The suspicion persisted, however, especially since one of them had changed his testimony in the course of the investigation. He was released, however, after the chief doctor's *(al-hakîmbâshî)* report was received. It confirmed that the private had indeed fallen from high ground, which caused his death as far as could be detected from external evidence on the body. The report corroborated this finding by stating that his trousers were found unbuttoned in preparation for urinating *(« wujad al-nafar... dikkat libâsihi mafkûka »).*[37]

23 Another case reviewed in the army for which medicine was central in investigating is the sad and dramatic fate of Murjân Ahmad, private in the 4th company of the 2nd infantry regiment in the Sudan. On the 2nd of February 1876, he died in the regimental hospital of a bullet wound he had received twenty hours earlier in his stomach. On investigation, it transpired that, while he was standing sentry on thefirst shift of the previous night's duties and while few other privates were awake, a gun shot was heard in the middle of the nighfs silence. Other sentries standing nearby immediately rushed to where they thought the sound had come and found Murjân lying in a pool of blood. He was rushed to the clinic where he was attended to by the regiment's doctor. The following day he died in the hospital after he had given a testimony quoted in the following official report :

> ...while he was standing in his night duty,...he started thinking of his family, his children, his village and his loneliness in these strange lands. He moaned and cried remembering his misery in being away from his people and his land *(firâq al-ahlwa-l-watan).* He was then seduced by the devil to kill himself to achieve comfort and pondered the idea of using his gun....lt was dark then so he left the barracks and

> loaded his gun, put its mouth against his stomach,...put his toe on the trigger and pushed. The bullet entered his belly and came out of his back.

24 An examination was immediately conducted in which thirteen of his colleagues were questioned. They all corroborated his version in insisting that he was the sole author of this terrible act, although they all said that they had never heard him mentioning suicide before. It was the medical report that, typically, proved conclusive :

> The entry wound was one inch to the left of the bellybutton. Surrounding the wound was clear signs of burning of the skin signifying the very close proximity of the weapon. The bullet's path was a straight line, exiting two inches to the left of the spinal chord. Both wounds had bloody substance coming out of them.

25 It was this evidence of the burning around the bullet wound, which meant that the gun must have been fired at very close range, that proved that it must have been self-inflicted. Accordingly, the case was dismissed.[38]

Popular reaction to forensic medicine

26 If forensic medicine had come to play an important role in criminal investigations both in the military and civilian sectors, how was it received by the majority of the population, those lower class Egyptians who were mostly illiterate and who had very little knowledge of clinical medicine and its forensic applications ? To understand the popular reactions to forensic medicine it is necessary to examine the records of the police and of the *siyâsî* courts. These records are very detailed and provide a fairly clear idea of the range of cases typically investigated and the different responses elicited from the people regarding the new methods of proof implemented by the police investigating authorities.

27 The first case was reported by a merchant who lived in Khân al-Khalîlî, in the Azbakiyya quarter (which by midcentury had become an elite neighborhood). While performing his morning prayers early on 10*jumâdî I 12*78 (13 November 1861), 'Alî Afandî heard a muted sound, like that of a heavy body, crashing on the floor. He immediately searched for his eighty-year-old mother, 'Â'isha bint Mustafâ, who was living with him and with his wife, and who suffered bouts of fainting during which she would loose consciousness for fifteen minutes or so. He rushed to his mother's room, but could not find her ; then, looking through the window, he saw her lying dead on the ground next to the broken pottery trough that she used for her ablutions. When subsequently questioned by the police, he said that his mother had the habit of raising early and performing her ablutions, after which she would throw the water out the window (noting that he had repeatedly asked her not to do this, for he knew that the local medical officers fine people caught throwing dirty water in the street). Since she was blind, he explained, she must have slipped and fallen out of the window with the trough.

28 His mother was found dead, and since 'Alî Afandî did not accuse anyone of causing the death of his mother, the case was dismissed according to *sharî'a.* However, since the police had to conduct a *siyâsî* investigation as well, both the *hakîma* (female physician) of the Azbakiyya quarter as well as the *hakîma* of the Cairo police headquarters had to submit their reports. The joint report clearly indicated that the death was caused by falling from a high place : « A fracture in the lower jaw bone and in the right side of the upper jaw bone....Multiple fractures in both forearms as well as in the right femur....Bruises all over the skin and a fracture in [both] feet, and in the left ribs with no wounds visible. Concussion in the brain, this last constituting the cause of death. » In the face of this

detailed medical report, *majlis* Misr was reluctant to press charges. To make sure that 'Alî Afandî's testimony was credible, however, an architect was dispatched to check the position of the window and the place from which the old woman would have fallen. Relying mainly on these technical and medical reports, and confident that the medico-legal system was efficient and reliable, *majlis* Misr decided not to charge anyone with the death of 'Â'isha bint Mustafâ. Accordingly, the case was dropped.[39]

29 In this case, 'Alî Afandî comes across as the perfect subject of the modern state who dares not violate any of its numerous ordinances and regulations. When his mother died, he dared not touch her body before reporting the case to the local authorities and before the relevant officials had been dispatched. Contrast this case, in which it appears that health regulations and especially those related to death had been accepted and internalized by the population, to the following case of an eighty-year-old man named Bayyûmî al-'Attarî of Shubrâ al-Khayma to the north of Cairo. On the morning of 20 February 1858, he marched off to the Cairo Police Headquartersin Azbakiyya to report on his wife. He took an axe and an earthenware jug with him, and when he arrived at the police station, he produced both the jug and the axe and claimed that his wife had filled his drinking jug with her menstrual blood in an attempt to poison him ; the iron axe, he added, was used by his own son the previous night to kill him.

30 Alarmed by these accusations, the police officer on duty immediately ordered a medical examination to be conducted on the claimant, and another examination to be done on the contents of the drinking jug. Bayyûmî was found healthy, although old and with weak eyesight. No signs of illness or bruises were detected on his body. More significantly, though, is that the liquid in the jug was not menstrual blood. Confronted by the medical evidence that contradicted his statement, Bayyûmî confessed that he had been lying and admitted that he had done so to get back at his wife *(bi-qasd ighâzat zawjatihi).* He, in turn, retracted his earlier testimony. He explained that the previous night he had fought with his wife, and like earlier fights, it was triggered by her continued refusal to have sex with him. It seems that on this night either he was particularly adamant about his marital rights, or she was equally adamant about denying him these rights, making fun of him by reminding him of his age in the presence of their children (they had two sons and a daughter). As a result of the dispute, his wife, Rizqa, sought the help of their son, Sayyid Ahmad, and together they pushed him in a room, slammed the door and bolted it from outside. Using an axe which he found in the room, Bayyûmî busted the locked door at daybreak, broke loose, and started thinking about what to say in the police station to get back at his wife and son. On the way to the police station, he passed a slaughterhouse, and once he saw it he got the fantastic idea of filling the earthenware jug with some stagnant water he found there. Bayyûmî was found guilty of filing false accusations and when the case was reviewed by m*ajlis* al-Zaqâzîq the sentence rendered was lenient due to his old age and weak eyesight : he was only sentenced to fifteen days' imprisonment. The case was finally forwarded to the *majlis al-ahkâm,* the country's supreme administrative and judicial body, which ratified the ruling of the *majlis al-Zaqâzîq*.[40]

31 This case shows a plaintiff, who filed false accusations against his wife, apparently oblivious to the elaborate legal procedures that had already been introduced in Egypt. It is unlikely that Bayyûmî would have dared to accuse his wife of trying to poison him had he known that the evidence he had produced would have been sent to the central hospital to be medically analyzed. In contrast to 'Alî Afandî, who lived in the heart of Cairo, Bayyûmî's case took place away from the city center which might imply that people living

on city outskirts were probably not familiar with the intricate health regulations that pertained to death. Alternatively, it could be argued that « marginal » people, i.e. those living near the precarious city boundaries, mighthave been under the illusion that precisely because they occupied such tenuous positions, they could evade the piercing gaze of authorities and their controlling, penetrating bureaucracies. This might be the explanation behind the following dramatic story which took place in 1877 involving a young woman named Fadl Wâsi' from Jirja in Upper Egypt who became pregnant after having sex with a local man whose name or exact dwelling she did not know. When her pregnancy began to show, and probably out of fear of her family and community's reaction to her scandalous act, she fled her village, walking all the way to Cairo where she hoped she would not be recognized. While roaming the city looking for a place to sleep, she recognized a fellow villager, a thirty-year-old man named Ahmad 'Abd al-Jawwâd, who took pity on her and invited her to stay with him. An infantry soldier, his barracks were in Qasr al-Nîl on the western edges of the city, but he was renting a room in a house owned by a certain Hajj Ibrâhîm Muhammad in 'Ishash Ma'rûf (also to the west of the city). The landlord, Hajj Ibrâhîm, initially objected to her moving in, but apparently he, too, took pity on Fadl when he saw her and was told her story and allowed her to live in a room in his house.

32 Five months later while she was only in her seventh month, she started having labor pains. Hajj Ibrâhîm immediately summoned the local midwife *(dâya),* a seventy-year-old woman named 'Abda, who came quickly. At sunset and after a long arduous labor Fadl gave birth to a baby girl. Hajj Ibrâhîm, again acting chivalrously, paid the seven-piaster fee which 'Abda demanded. Mistaking Ahmad for the father, 'Abda asked for his full name so that she could report the newborn to the local health office as was customary, but Ahmad lied and told her that soldiers need not report their children and that they were exempt from this important regulation.

33 Being somewhat unconvinced of this allegation, 'Abda was, nevertheless, content with her seven-piaster fee and eventually agreed not to report the birth of the baby girl. The case could have ended there as there were probably countless such cases where people managed to evade the government machinery altogether because they were not registered at birth. The problem with Fadl Wâsi' and Ahmad, however, was that fate was not kind to them, for the baby girl died the following day. (It has to be mentioned that Fadl was syphilitic, which might have been the cause of the death of her newborn baby, although, as shown below, this was never explicitly mentioned as the cause of death). Since they had not reported the child's birth in the first place, the couple now felt trapped : they could not report the death of a person who, as far as the authorities were concerned, had never been born. Caught in a delicate situation, both Ahmad and Fadl decided to bury the body without informing the authorities. However, since both were extremely poor and could not afford to « prepare, buy a shroud for, or [properly] bury the body, » they went to a spot underthe newly constructed Qasr al-Nîl bridge and buried the body in a shallow grave they dug with their own hands.

34 The case could have ended then and there, but fate was again unkind to Fadi. One day later, some children playing under the bridge frantically went to report to the neighborhood *shaykh (shaykh hârat Ma'rûf)* that a dog had unearthed what appeared to be a human corpse. Once informed, the *shaykh* notified the police authorities which promptly took the body for examination in the police station. When the resident doctor could not identify the cause of death, or even ascertain whether the body was that of a

stillborn baby or a child who had died after delivery, the body was sent to Qasr al-'Aynî for an autopsy. The result of the examination again was inconclusive because of « the horrible condition of the corpse. »

35 Fadl and Ahmad in the meantime were interrogated in the police station and together, with the midwife, were found guilty of not reporting the birth of the baby girl. In addition, the couple was also found guilty of violating government regulations regarding proper burial and the need to notify the authorities of any death that occurred inthe city. [41]

36 What this tragic case illustrates is an attempt by a poor, illiterate young girl, who was probably tricked in giving her honor to a man whom she had met, to evade her society's controlling gaze. The circumstances in which she had sex with this man (who is left unnamed throughout the story) are not known. Fadl's story only begins after she had managed to escape her community and evade their accusing glances and gossip. Arriving in the big city alone, tired and pregnant, she must have felt that she had escaped the worst fate possible, only to find out in a terrible way that it was even more difficult to evade the piercing gaze of the modern state and its controlling agencies. Whereas Fadl managed to draw both Ahmad and Hajj Ibrâhim, and the midwife 'Abda, to her side, she had no chance in doing so with the *shaykh al-hâra,* the police commissioner or the police physician. For these government officials, Fadl had infringed on the rights of the state by not informing them of the birth of her child and then by disposing of her baby's body also without informing them. The state's insistence on its prerogatives which laid strong claims on its citizens' bodies made life even more difficult for Fadl who ended up losing not oniy her baby, but the anonymity and protection she so cherished.

37 That the complex and efficient health procedures might have been particularly unfamiliar to those living at the precarious edges of the city is also shown by the following case involving the death of a fifteen-year-old boy, Muhammad b. Muhammad 'Abdallâh, of Shabramant, Gîza. Sometime in late *sha'bân* 1276 (February 1860), young Muhammad was sent to learn the Koran with two *shaykh-s, shaykh* Mahmûd and *shaykh* Ibrâhim, who had a Koran school *(kuttâb)* in the southern cemetery ofCairo. Although it had no great schools or mosques, this area had important religious appeal for the common folk : Imâm al-Shâfi'î is buried there (although the beautiful mausoleum presently found in the cemetery had not been built yet) ; it is also the location of the mosque of Sîdî 'Uqba and the shrines of Imâm al-Laythî (al-Leisî, as he was called at that time), of Sayyida Râbî'a al-'Adawiyya, Dhû al-Nûn al-Misrî, Sîdî Muhammad ibn al-Hanafiyya and Sîdî 'Uthmân al-Zayla'î. In addition, *sha'bân* is the month of the *mawlid-s* of both *imâm* al-Shâfi'î and *imâm* al-Laythî, which were jointly celebrated for the first fifteen days of the month.[42]When young Muhammad did not return home at the expected time, 'Abdallah went to the *kuttâb* in person, only to be informed by some children that his son had died three days earlier in the mill *(tâhûna)* that was attached to the *kuttâb.* At the mill, he found his son's clothes, stained with blood, and was told that the body had already been buried. He then went to the Cairo police headquarters and demanded that the two *shaykh-s* be summoned. When they appeared, he and his wife charged them with the murder of his son. The *qâdî* dismissed the case because the plaintiffs could not prove it according to the *sharî'a.*

38 The police authorities, however, immediately conducted an investigation into the circumstances surrounding the death of young Muhammad. The boys in the *kuttâb* reported that young Muhammad was in the habit of sleeping with two other children on

the wheel of the mill, since there was not enough room in the *kuttâb* for the children. They added that the children used to sleep there without the knowledge of the miller, who had poor eyesight. On the first or second night of *ramadan,* when the two other children arose for the midnight *suhûr* meal, they could not find Muhammad. Little did they know that, while sleeping, he had fallen and was instantly killed when his body was caught between the wheels. When the body was discovered the following morning, *shaykh* Mahmûd ordered that it be washed, shrouded and buried.

39 Salîm Afandi, the police commissioner in charge of the case, was shocked to discover what had happened. He immediately wrote to the Bureau of Health Inspection, demanding to know how something like this could happen. The answer he received was alarming : this area was not subject to the jurisdiction of any of Cairo's ten quarters. As a result, no quarter or street *shaykh-s* had ever been appointed there *(là u'lam Iahâ là shaykh thumn wa lâ mashâyikh hârât),* no postmortem examination had ever been conducted there ; and neither births nor deaths were registered systematically ; in short, « none of the health regulations are ever applied here. »[43] In addition, Salîm Afandi learned that the *kuttâb* had no registers in which the students' names were recorded ; that no one knew when the children had arrived, or where their parents were living ; that the *shaykh-s* had not been informed that they had to know the names and home addresses of the childrenin their custody ; and that they were so completely oblivious to the affairs of their own *kuttâb* that some of them had learned about this incident only when the police arrived.

40 This complete lack of order had to be rectified at once. Those responsible for Muhammad's death were summarily prosecuted. *Shaykh* Mahmûd and *shaykh* Ibrâhîm were initially sentenced to six and three months in jail, respectively,[44]and the men who washed, shrouded and buried the body were sentenced to two months of hard labor.[45]The most important outcome, however, was the prompt action taken to attach this neighborhood to the quarter of Old Cairo and to « ask its shaykh to apply all health regulations there as diligently as he would apply it in the other streets of his quarter...including such matters as registering newborn babies, conducting postmortem examinations, registering the dead, etc.... »[46]

41 Like Fadl Wasii', the *shaykh* responsible for the *kuttâb* where Muhammad had died reacted to death in a way that contrasted sharply with how the state expected them to react. For them, death was a fact of everyday life. They lived with it and looked upon it as a self-evident part of their lives. They considered the dead to be *their* dead, feeling no need to notify the state authorities of what they obviously considered a matter of utmost, but local concern. For *shaykh* Mahmûd and *shaykh* Ibrâhîm, young Muhammad belonged to them and to their community even if his name did not appear on any official register. When they were informed of his death, they did the only thing they saw proper : they promptly washed, shrouded *(takfîn)* and buried the body. These rites were performed with solemnity and reverence, believing in the Islamic principle that maintains that « dignifying the dead is to bury them promptly. » To them, the appearance of the Cairo police commissioner on their premises and his alarm must have been very surprising. More bewildering to them must have been his thoroughness and his meticulous investigation that reflected the interests of the medico-legal establishment and, behind it, the state's « rational, official form of organization, which could not tolerate the integral entanglement of life and death. »[47]To the repeated questions about why they had not informed the authorities of Muhammad's death, the *shaykhs* could only say that they

thought that any delay in burial would have been improper *(« al-ta'khfr 'an dhâlika laysa mm al-sawab »).*[48]

42 The response of the '*ulamâ'*

43 As nonchalant as the *shaykhs'* response to the probing questions of the police might seem, their reaction does not appear to be typical of the religious establishment, in general, to the introduction of new medical tools that assisted the authorities in controlling crime and disease. It is known that on other occasions,members of the *'ulamâ'* had opposed the state's new medical measures. During the 1835 plague epidemic, for example, the Alexandria *'ulamâ'* drafted a petition and presented it to Mehmed Ali complaining about the quarantine measures that the newly established Quarantine Board had imposed on the city. They explained that a number of the Board's measures, especially that of examining nude bodies, were « not in harmony with the law, » and concluded that the measures were doomed to failure because Muslims were not afraid of the plague.[49]During the cholera epidemic of 1848, the'Ulamâ'again complained about the new regulations concerning the burial of the dead which necessitated postmortem examinations of all corpses, something that often caused delays in burials.[50]When, in 1874, the *shaykhs* of the shrine of Sayyida Nafîsa in southern Cairo were ordered to stop burying the dead in the neighboring cemetery, they complained saying they had no other place tobury them.[51]

44 This opposition, as ineffective as it proved to be, should not be judged as a reactionary response by bigoted clergymen to the proven benefits of modern science. Rather, it should be seen as representing the reaction of common people to the encroachments of the modern state on private life. As said above, this encroachment was most deeply felt in times of death, when the dead ceased to belong to their families and their communities and, instead, were appropriated by the state which decided how, when and where they were to be buried. Although the *'ulamâ'* often couched their resistance in dogmatic terms, citing various Koranic verses and sayings of the Prophet, what they were complaining about was the very concrete steps that the state was undertaking and which they clearly saw as violating the sanctity of death and contradicted various principles held by their communities. Burying the dead outside the city might have been quite rational and useful for hygienic reasons,[52]but it isolated the communities from their dead. Forbidding the families of the deceased from wailing and crying loudly behind the biers on the way to the graveyard might have been useful to maintain the tranquility of neighborhoods during epidemics,[53]but this prevented the families from expressing their grief for the passing of loved ones. Transporting families of persons who allegedly died of plague outside the city, and placing them in quarantines [was considered] a tyrannical measure that removed the poor from their work and deprived them of their daily bread. »[54]

45 With regard tothe use of medicine in investigating criminal cases, in particular, it is important to note that this new procedure seems not to have triggered a hostile reaction from the *'ulamâ'* except the occasional complaint that postmortem examinations delayed burials. Significantly, when this complaint was filed, it was mostly in cases involving the female doctors, the *hakima-s,* and not their male colleagues. This was particularly problematic in the case of the two farthest Cairenequarters *(thumns),* namely Old Cairo in the south and Bûlâq in the north. In this case, it usually took much longer for the *hakîma* to arrive causing delays in burials, thus inciting the opposition of religious scholars.[55]In their opposition to the new health establishment, the clergy already weakened by the reforms that Mehmed Ali and his successors had been introducing in Egypt, did not dare voice their opposition publicly. They also would not dare attack Clot Bey or any of his

assistants openly. They felt, however, that they could be safe in accusing women doctors of slowness and inefficiency, and preventing religious rituals from being properly performed.[56]

46 To better understand the reaction of religious scholars to this new application of medicine, the investigation now turns to cases of child molestation, miscarriage and further homicide cases to show how forensic medicine, the prime example of *siyâsî* methods of proof, was thought not to contradict the *sharî'a,* but to complement it. The aim is to discover how these crimes were investigated by the new legal establishment and to offer a description of the tenuous relationship between *shari'a* and *siyâsa.*

47 The first case deals with child molestation and concerns Ahmad Hasan, a trumpeter in the Zaqâzîq regiment, who entered one of the coffee houses where he met young 'Â'isha. He had known the girl for some time and had, in fact, asked to marry her. She seemed not to mind, nor did her mother, but her father did, probably because Ahmad was a poor soldier or because 'Â'isha was still very young. When Ahmad, therefore, saw 'Â'isha in the coffee house, he persuaded her to leave with him and subsequently had sexual relations with her. When her father learned about this, he filed a lawsuit before the Zaqâzîq *shari'a* Court, where he succeeded in proving his case (probably on the strength of a confession by the defendant). The Court ruled that Ahmad Hasan was to pay 900 piasters to 'Â'isha's father as the sharî'a-stipulated dowry *(mahral-mithl).*[57]The case, subsequently, was forwarded according to normal procedures to m*ajlis* al-Zaqâzîq, where it was reviewed according to the *siyâsa.* Here, it was not the testimony of the defendant that was central, but the report prepared by the *hakîma* of Zaqâzîq in which she verified 'Â'isha's loss of virginity. Accordingly, the *majlis* al-Zaqâzîq ruled that « although the law [i.e. *al-qânûn alsultânîl* stipulates...that whoever commits this abominable act is to be jailed for six months in chains,[58]since the defendant is a soldier, he is to be given 200 lashes in the presence of the physician, and the m*udîriyya* [provincial government] is to deduct fifteen piasters [from his monthly salary] and deliver them to the father of the girl [in fulfillment of the *shari'a* court ruling]. » Due to its seriousness, the case was then forwarded to *majlis al-ahkâm,* which ruled that « although according to *shari'a* the defendant was sentenced to pay only *mahr al-mithl,...* nevertheless, due to his wrongdoing, and to deter others from undertaking this abominable act, he is tobe sentenced according to *siyâsa* to six months of hard labor in addition to having his salary deducted....The [earlier] verdict of beating him is to be dropped. »[59]

48 The procedure in this case typifies that applied by the newly founded provincial m*ajâis* in pederasty cases.[60]*Majâlis* cases involving pederasty (as well as others, as will be shown below) were first reviewed according to the stipulations of the *shari'a.* Regardless of the findings of the *qâdî shar'î,* however, these new legal bodies were to review the cases according to the *siyâsa* and to pass judgement according to a different set of laws and decrees, the most important and comprehensive of which was *al-qânûn al-sultânî.* Although forensic medicine played an increasingly important role in the normal functioning of these courts, no physicians were ever summoned to the *majlis* to give their oral testfendant, witness, or expert. Instead, these legal/administrative bodies reviewed the cases solelimony on the case at hand. In fact, no one was ever summoned to these courts, no plaintiff, dey from the different reports that the police magistrates had compiled, based on their own minute and meticulous investigations. The *majlis's* main role was confined to three main tasks : making sure that the police magistrates had conducted a thorough investigation ; issuing a judgement based on their own reading of

the law ; and, in the case of *majlis al-ahkâm,* approving, revising and/or ratifying the judgments of lower *majâlis.*

49 What is of concern here is that the different reports that these *majâlis* routinely received included a medical report prepared by the local *hakîm* or *hakîma.* These reports invariably played a very important role, first, in convicting or acquitting the defendant, and second, in assessing the degree of damage inflicted so that a judgment could be passed. For further illustrations of the role forensic medicine played in investigating pederasty, consider the following cases.

50 On the night of 31 August 1860, a woman named Dalâi Umm Muhammad of Qantarat al-Dikka in north-western Cairo was brought to the Cairo police headquarters *(dabtiyya)* shortly before midnight. She claimed that she had tried to prevent a certain Amna from beating her daughter, Zaynab, but that, caught in the middle of the fight, the mother had received a kick in her belly and, since she was pregnant, she had severe pains and soon afterwards started to bleed. Since the resident *haklma* was not present, she was rushed to the Civilian Hospital (located in Azbakiyya),where the *haklma* there did her best but to no avail : Dalâ lost her baby. When questioned in the *dabtiyya,* she could not prove that her miscarriage was the result of the blows received from Amna. The *dabtiyya* sent both women to *al-majlis al-'ilmî,* the *shari'a* council held in the Mu*hâfaza (majlis* Misr had not yet been created, and this and similar cases were reviewed by*jam'iyyat al-muhâfaza).* Two weeks later, *al-majlis* al-'ilmî was convened : neither the plaintiff nor her husband could substantiate their claim ; furthermore, they did not demand an oath *(yamîn)* from the defendant. As aresult, they lost their case *(qad sâra man'uhumâ min da'wâhimâ)* and a ruling to that effect was issued by the *qâdî (wa sadara bi-dhâlika i'lâm shar'î bi-khatm hadrat mullâ afandîî)...*The case was then forwarded to the *jam'iyya* which ruled that, since the plaintiff had failed to substantiate her claim, and since the defendant had not confessed that she had beaten the plaintiff, and when the case was heard according to *sharî'a,* the plaintiff and her husband lost the case, the case should be dropped, and this verdict should be presented to the Khedive for ratification.

51 The report of the *hakîma* of the Civilian Hospital did not play a central role in this case ; nevertheless, it was not neglected. What was at issue here was not whether a miscarriage had occurred, even less whether it had been caused by a beating ; the *hakîma'sr*eport about this was conclusive. The question was about the absence of witnesses who could be accepted according to *sharî'a* principles, something that was recognized by the *ma'iyya* (i.e. the viceregal cabinet — the Khedive's own department) which returned the case to the *jam'iyya* twice with comments and questions to be pursued by the police.[61]

52 Another case involving tension between *shar'* and *siyâsa* is a nearly contemporaneous one involving two co-wives, Hânim bint Muhammad and Zannûba al-Basîra (who, as suggested by her name, was blind).[62]As is common among the wives of the same man *(durai),* there was considerable jealousy between the two women. The fact that Zannûba was pregnant exacerbated the situation.[63]One night the two women clashed. Hânim pushed her co-wife, who tumbled over a metal bed and began to bleed. She was rushed to the hospital, where the *hakîma* later wrote that she had suffered a miscarriage.

53 When a *majlis shar'î* was convened, a single witness stated that he had seen Hânim holding Zannûba from behind ; he was not sure if she had pushed her. Hânim herself did not deny the fight, but claimed that she had given her co-wife only a small push which, unfortunately, because or her blindness resulted in her filling on the metal bed. The husband, together with Zannûba, decided to drop the charges.

54 The case was subsequently brought to the *jam'iyyat al-muhâfaza,* where a different verdict was given. The police headquarters had earlier asked the Civilian Hospital to clarify whether falling on a metal bed might cause a miscarriage. The answer was clear : « Causes of miscarriages are numerous. They include falling on a solid object, the body [of the pregnant woman] being beaten by a solid tool, falling from great heights, blows to any part of the body, strong psychological tribulations *(al-infi'âlât al-nafsâniyya al-shadîda).* » Basing itself on this report, *the jam'iyya* issued the following ruling :

> Since it was established that Zannûba al-Basîra had suffered a miscarriage as a result of the fight she had had [with her co-wife],...and since witnesses have testified that the fight did in fact take place ; and given the Hospital's report which stated that among the [various] causes of a miscarriage is falling on a solid object,...itwas decided, after deliberating on this case, that even though no one was convicted when the case was heard according to the sharî'a because the plaintiff had pardoned (musâmahat) [the defendant], yet because matters regarding miscarriage are important ones, and since it is clear (muttadih) that the miscarriage was caused by the fight with her co-wife and her falling down as a result, and since the defendant acknowledged that she had had a fight,...[due to all this] she is hereby sentenced (istuswiba) to two months' imprisonment in the iplikkhâne workshop, after deducting the cost of treating the woman in the hospital (22,75 piasters)...This is according to Article Four of the Five-Article Circular issued at the end of safar 1275 (October 1858).[64]

*Siyâsa*and*sharî'a*

55 What becomes clear from these cases is that, in spite of applying new legislations passed by the Khedives, the *majâlis* were not ignoring the *shan'a* in their rulings. As demonstrated, these laws themselves were often referring to the *shan'a.* The *shar'î* principle of dropping a case because of the plaintiff's pardoning of the defendant, however, was considered inadequate, given the authorities' concern with matters of public interest. As with homicide, the legal authorities, both with regard to legislation and the functioning of the *majâlis,* recognized that the *shan'a* deals with the private claims of the victim (or of his/her heirs, in cases of homicide), while the *siyâsa* deals with matters of public interest.[65] It is a continuation of the age-old tradition in Islamic legal thought and practice, represented by the split between *qadâ'and siyâsa,* between *hudûd p* unishments and *ta'zir,* and between *qâdî c*ourts and *mazâlim.*[66]

56 None of these medico-legal innovations was couched in a language that would be considered inimical to Islam, or something that should not be seen as a polemical trick or clever ploy used in an attempt to buy off the *'ulama'.* Indeed, none of the doctors, police commissioners or legal magistrates mentioned in the sources seem to have believed that what was being done was contrary to the *shan'a.* The various legal councils that proliferated in Egypt from the early 1850s, at the top of which was *majlis al-ahkâm,* had within them a *majlis shar'î* whose job it was to review pending cases solely on the basis of the *shar'.* These *majâlis shar'iyya* were presided over by a *qâdi shâfi'î* or a *qâdî hanafî* who were themselves under the jurisdiction of the Grand m*ufti,* the *mufti al-diyâr al-misriyya,* appointed by the Khedive.[67]The larger secular *majâlis* would look into a case only after it had been reviewed by the internal *majlis shar'î* and would not pass rulings that would contradict the findings of the *qâdî-s shar'î.* In none of the rulings contained in the hundreds of registers of *majlis al-ahkâm,* for example, is found any ruling that passeda death sentence on a murderer who had not already been given such a sentence by the

qâdî.[68]On the level of legislation, although the penal codes enacted by Mehmed Ali and his successors are often seen as having been influenced by European, and specifically French, legal codes and practices,[69]it has been shown thatthis« influence...remained amatterofform and notofcontent... [andthat] Egyptian nineteenth-century penal legislation is basically Egyptian in origin... [and was] characterized by an interaction and division of labor between the *qâdîs* courts and secularjustice. »[70]

57 That this new medico-legal system was viewed as upholding the *sharî'a* is evidenced by the personal testimony of one of the leading Egyptian medical practitioners. Muhammad al-Shubâsî was one of the early doctors who had been sent to France in the second student mission of 1826. Upon his return to Egypt, he was appointed Professor of Physiology and Anatomy, the most prestigious of academic positions in the newly founded Qasr al-'Aynî School of Medicine ; in the adjoining hospital, he was in charge of the Venereal Disease Clinic. His most important work was the translation of Jean Cruveilhier's *Anatomie pathologique du corps humain,* which appeared under the title of *al-Tanqih al-wahid fi al-tashrih al-khâss al-jadid.*[71]In addition, he wrote a one-volume textbook, *al-Tanwîr fi qawâ'id al-tahdir,* as an aid for his students on how to prepare corpses for autopsy and how to conduct the autopsy itself. It was this latter work that was the basis of his fame. *Al-Tanwîr was* presented to the Health Council, which ordered a thousand copies to be printed.[72] If what the author says of the book's effects on his students is true, it appears to have been a smashing success : students were in the habit of taking corpses to their lodgings to learn more about human anatomy and had no problem sleeping in rooms where dead bodies were kept, heedless of the criticism that this attracted.[73]

58 In the concluding parts of his book, al-Shubâsî expresses his views on how he thought his work could be of assistance to Islam. In his closing remarks about how the forensic doctor *(al-tabîb al-siyâsî)* is to conduct his job, he reminds him of the importance of his work :

> What we have just explained should enable the forensic doctor to be sufficiently alert and clever to discern the time of death of several persons who died instantaneously. For example, if three persons die together as a result of drowning, a problem arises regarding inheritance, a problem that cannot be solved unless it can be established who among the three died first....[This the forensic doctor can establish], but he must be careful to make clear that his results are not absolute truths, but only approximations to the truth.[74]

59 In his very last remark, he reminds his students of the importance of diligence in their work and cautions them not to jump to easy conclusions when, for example,they see a dead body in the street. « For if he [i.e. the forensic doctor] says that the victim died as a result of a brain stroke [i.e. a natural death] but death was caused otherwise [i.e. unnaturally], then two errors are committed : first, the sharî'a-stipulated blood money *(qisâs)* from his murderer is prevented, and, second, this case would be recorded wrongly in the death registers. »[75]In other words, the forensic doctor's work is important to uphold the *shari'a* and the *siyâsa :* a sloppy report would lead to a *shan'a* principle, *qisâs,* being forsaken and an important function of the modern state, that of collecting vital statistics, being undermined.

60 The central position of legal medicine in the Egyptian legal system should be obvious by now. Far from signalling its demise, the introduction of these novel methods of establishing legal proof was meant to bolster the *shar'.* At no time were any of these new methods, including autopsy, considered contrary to the *shari'a.* Rather, like the old *qânûn* legislations of the Ottoman sultans, the use of medicine was meant to complement *shan'a*

in areas where the stringent *fiqh* principles made it difficult to convict the defendant or in defining as illegal acts that had not been criminalized by *shari'a.*

61 It might be useful to end this discussion on the duality between *shar'îa* and *siyâsa* to revisit the question raised earlier concerning popular reactions to forensic medicine and to specifically inquire how the lower classes understood, dealt with, and/or exploited this legal duality.[76]Reading numerous contemporary cases makes it clear that the members of lower classes, both in urban and rural areas, understood this duality between *shari'a* and *siyâsa,* were aware that medical evidence, including autopsy, played an important role in the law ; and were willing to go to great lengths to manipulate the legal system to their benefit. This is apparent in the case of Mahbûba, the wife of 'Alî Jâd Allâh, from Minyâ in Upper Egypt. On 2 July 1858, Mahbûba's mother and brother came to the local *qâdi* claiming that she had been beaten by Muhammad al-Sha'râwî, the shaykh of the local *hissa* (part of a village). The reason for the beating, they said, was that her husband, who had been summoned to perform corvée labor for the Suez Railway, had escaped, and Sha'râwî, suspecting that he would return home, had gone to his house. Mahbûba denied any knowledge of her husband's whereabouts, but Sha'râwî did not believe her. He had her arrested and imprisoned in the local jail for seven days, where he beat her severely on her chest and heart. Soon afterwards, the wounds from the beatings inflicted by Sha'râwî worsened. The jailor informed the shaykh, who eventually released her and delivered her to her brother, taking her son in her place. When her condition deteriorated and she realized that she was dying, she asked to see her son. Her brother approached Sha'râwî and offered him 100 piasters if he would release the boy so that his mother could see him before she died. Sha'râwî took the money but did not release the boy. Shortly afterwards, Mahbûba died.

62 After her mother and brother had given their testimony in front of the *qâdî,* they insisted on submitting the body for examination. Placing the body on a camel they went to Qulusna, a neighboring urban center, where the deputy doctor established that Mahbûba had been severely beaten with a hard stick from her chest to her face, and from her shoulders to her wrists. He added that she was bleeding from her mouth when she died. Death, he concluded, was caused by beating.

63 After the claimants had brought the case to the attention of the local police, Sha'râwî was interrogated. He completely denied the charges, claiming that he had gone to Mahbûba's house only because her husband owed him some money ; when he could not find him, he had her imprisoned on the orders of the local governor *(nâzir).* He subsequently released her and sent her home, where she later died. When he had gone to pay his condolences, he added, he asked her relatives to inform him if her husband, 'Alt, had appeared. The relatives told him that they would not do so, leaving him no choice but to take the son into custody. At that point, he claimed, the relatives became infuriated *(hasal li-ahliha hamâqa),* had Mahbûba's body exhumed, « and roamed the area with it requesting a medical examination in order to falsely accuse me [of murder]. »

64 When the *qâdî* was questioned by the police, he said that, on the night of Mahbûba's death, her body was brought to him, washed and placed in a shroud *(mughassala wa mukaffana).* He added that her brother wanted to have her examined. When he asked him if he could detect any signs of beating on her body, the brother denied seeing any suspicious signs. The *qâdî* then claimed to have informed the brother that ascertaining the nature of any suspicious marks on the body was something that only a doctor could do. The brother had buried her, but soon afterward had her exhumed, put the body on a

camel and took it to the local governor. The *qâdî* added that he thought that the contusions found on the body had been produced after the exhumation and had been caused by the rope which tied the corpse to the camel.

65 The defendants were now asked to respond to these counter-allegations. Confronted by the testimonies of Sha'râwî, the *qâdî,* the *nâzir* and other local *shaykhs,* they withdrew their accusations, except for the part regarding exhumation of the body : they insisted that the medical examination had been conducted prior to burial, and not after exhumation. Soon thereafter, and probably as a result of the appearance of the husband, 'AIÎ, the defendants resumed their accusation, claiming that they had been intimidated by the monolithic denials of all the local authorities : the *nâzir,* the qâdî and the *shaykhs.* They added that they could not produce any witnesses because no one had been present when Mahbûba was arrested, that no one had seen the actual beating in the gaol, and that the only person who could have seen the marks of the beating would have been the professional corpse-washer *(al-mughassiila),* who happened to be Mahbûba's mother, but who, unfortunately, was blind. They thus rested their entire case on the report of the deputy doctor *(tamassakû bi-mâ tawaddah bi-kashf al-akîm).*

66 When the case was reviewed according to the *sharî'a,* it was dismissed. The local m*ajlis, majlis* al-Fishn, however, was suspicious of the conspiracy of silence by the *qâdî,* the *nâzir* and the *shaykh-s.* The *majlis* found Muhammad Sha'râwî guilty of murder and sentenced him to five years in the lîm*â*n of Alexandria. The case was forwarded to *majlis al-ahkâm,* which approved and ratified the sentence.[77]

67 Severe beatings were always a serious problem in the countryside, where the Turkish-speaking provincial governors were legendary for their harshness. As the saying goes in colloquial Egyptian : âdhir *khidmat al-ghuzz 'alqa* (as a result of serving the Turks, you get beaten).[78]Beating, in its various kinds — the infamous bastinado *(falaqa),* flogging bythe whip *(kurbâj),* orthe simple stick *(nabbût)* — was the common method of punishment until it was replaced by imprisonment in 1862 (according to a Khedival order that was not strictly applied).[79]Provincial governors, from the *mudîr*the *mudîriyya* all the way down to *shaykh al-hissa,* often ordered brutal beatings which made it necessary for doctors to be available when the punishment was meted out. The *fallâhîn,* confronted by a formidable coalition of local authorities — the *mudîr,* the nâz*ir,* the shaykh of the village and of the *hissa,* and even the *qâdî* — often pinned their hopes on local doctors to have their cases substantiated.

Conclusion

68 With regard to the reaction to autopsy and to forensic medicine in general, what is remarkable about these cases is the ease with which these new practices were conducted in Egypt. As noted, autopsies were not performed only at the behest of the police ; they were occasionally conducted at the request of the litigants themselves. It is true that some resistance from the *'ulamâ'* did occur and other non-elite members of society did resist the application of various medical practices. This resistance, however, was not religiously motivated, but was triggered rather by a more general response to the different agencies of the modern state that were rightly seen as interfering inthe lives of ordinary folk in new, unprecedented ways. There is, nevertheless, no evidence of violent resistance to dissection and autopsy-practices that were correctly seen as serving the state's interest in controlling epidemics, investigating crime, and assisting in medical

education. These practices were, moreover, often requested by to redress what they considered seriousmisapplication of justice. And as the modem Egyptian saying goes, *el-hayy ab'a min el-mayyit,* the « living is more lasting than the dead. » In other words, people were not deterred by the sanctity of death if they thought that an autopsy was their only chance to establish justice. Forensic medicine thus appears to be one of many contested domains of modernity : it might have been resorted to by the state to ensure a tighter control of the population, but people were not left helpless in the face of this new onslaught on their lives. They soon discovered the centrality of medicine in the evolving legal system and occasionally sought its use to prove their criminal suspicions when other means were denied them. Their determination to resort to forensic medicine in pursuing criminal investigation was often successful.

69 The reaction of religious scholars to the new medical establishment could be seen more as a reflection of their concern for their loss of status in the new Egypt of Mehmed Ali and his successors than of their alarm at the danger posed by the khedives' « modernizing » efforts on « Islam » and its principles. Their largely ineffective opposition was linked to what they considered to be an infringement on their rapidly declining influence in society, reduced to performing the last rituals of death, though even then their role was severely curtailed. Unfortunately for them, Mehmed Ali and his descendants gave them only a small role in their reforming efforts. Like the members of the notable aristocracy who claimed descent from the Prophet (the *ashrâf)* and the large merchants of the eighteenth century, they had lost their privileged positions as mediators between the rulers and the ruled. Their place was filled by a new middle class composed, *inter alia,* of graduates of the various schools that the khedives had founded, chief among them being the graduates of the Qasr al-'Aynî School. It was these young graduates, armed with scientific diplomas and eager to climb the social ladder, who were challenging the *'ulamâ"s* position. Despite their conviction that their new tasks (e.g. performing autopsies) in no way contradicted the principles of Islam, the graduates of the Qasr al-'Aynî School and their colleagues from the School of Midwives were acutely aware of the hostility of the religious establishment.

70 These young doctors were also aware that they were challenging other important members of nineteenth-century Egyptian society, namely the Turkish-speaking aristocracy.[80]It should be stressed that the Turkish-speaking aristocracy which had its base, so to speak, in the army and in the expanding bureaucracy (and later in agricultural land) felt jealous of the power and prestige that the medical establishment enjoyed under Mehmed Ali and later under Ismâ'îl. Aware of the important position that they were called to play in the legal system as well as in urban planning and in the military, the Arabic-speaking, French-trained doctors soon realized that their medical diplomas were powerful tools that could propel them to higher positions in society and were only too eager to use their medical expertise tocarve out a place for themselves in the new Egypt at the expense of the Turkish-speaking, military-bureaucratic aristocracy. It is significant to note that it was these Arabic-speaking, French-trained doctors to whom the *fallâhîn* turned in their efforts to address grievances suffered at the hands of their Turkish-speaking provincial governors. The provincial doctors who conducted these autopsies were not merely fulfilling their medical duties ; they were conscious of the fact that their modern medical practices, including autopsies, constituted a tool that could be used both to distance themselves from the poor illiterate masses and to climb the social ladder at the expense of their Turkish-speaking superiors.

71 The story of the introduction of legal-medicine into nineteenth-century Egypt should not, therefore, be reduced to the frustration of the ignorant *fallâhîn* with, or the superstitious reaction of the fanatic *'ulama'* to, a few enlightened reforms. Nor should it be seen as only a result of some breakthroughs in modern medical or legal thought. Like other practices undertaken by the newly empowered medical establishment, (e.g. vaccination, registration of deaths, collection of vital statistics, and quarantines), autopsy can be seen as yet another way in which the modern state interfered in private life and appropriated the human body for its own purposes, • be they conscription, taxation, or expanding sovereignty. But like these other practices, people's reaction to it was complicated and nuanced, informed by class and ethnic considerations.

72 The practice of autopsy in nineteenth-century Egypt might be seen as an attempt on the part of the state to appropriate the body and declare it to be state property. Whereas the khedives and their European and local advisors found in it a tool by which they could exhibit their power in a more diffusive, and hence, effective, way, the young Arabic-speaking doctors found autopsies, in particular, and modern medicine, in general, to be an empowering tool that they used to improve their position in society mainly at the expense of the Turkish-speaking aristocracy. Likewise, the illiterate masses attempted to use forensic medicine to their own benefit, often asking for an official autopsy to redress what they considered to be a serious miscarriage of justice ; they occasionally managed to have their grievances redressed. In short, forensic medicine, like other manifestations of modem power, was a contested practice whose history reflects the larger social and ethnic tensions present in nineteenth-century Egyptian society.

NOTES

1. Vardit Respler-Chaim, 1996, « Postmortem Examinations in Egypt, » in : MuhammadKhalid Masud, Brinkley Messick, and David Powers eds, *Islamic Legal Interpretation : Muftis and Their Fatwas,* Cambridge, Ma. : 281.

2. *Ibid.,* p. 278.

3. *Al-Manâr,* vol. 10 (1907-1908), p. 358-359.

4. *Ibid.,* p. 359.

5. *Al-Manâr,* vol. 13 (1910), p. 100-101.

6. For a perceptive analysis of the attitudes of modern Egyptians towards death, see Sayyid 'Uways's ground- breaking study *'Atâ' al-Mu'damîn* (Beirut : n.d.).

7. J. Anderson, 1951, « Homicide in Islamic Law, » *Bulletin of the School of Oriental and African Studies* 13 :824.

8. J. Schacht, 1984, *An Introduction to Islamic Law,* Oxford : 122. Forthe importance of witnesses' testimony in seventeenth-century Egyptian *sharî'a* courts, see Galal el-Nahal, 1979, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century,* Minneapolis and Chicago : 25-35.

9. See Uriel Heyd, 1976, *Studies in Old Ottoman Criminal Law,* Oxford.

10. With few notable exceptions, most studies of the history of the Egyptian legal system in the nineteenth century have made very little use of archival material and, instead, have relied heavily on three sources dating from the end of the nineteenth century and the beginning of the

twentieth century. The first is Fîlîb Jallâd's *Qâmûs al-idâra wa-l-qadâ'* (Alexandria, 1891) ; the second is Fathî Zaghlûl's *al-Muhâmâ* (Cairo, 1900) ; and the third is Amîn Sâmî's *Taqwim al-Nil,* 3 vols. (Cairo, 1928-1936). All three sources were mostly, if not exclusively, edited volumes of material collected from the Royal Archives of Egypt (the precursor to the present National Archives) before the Archives were opened to researchers, and before their contents were catalogued or organized in any systematic way. In spite of their inconsistencies, omissions and occasional mistranslation from the original Turkish into Arabic, these three sources have been mistaken for primary sources, and together they have assumed canonical importance that considerably shaped the field of Egyptian legal history.

11. Michael Clark and Catherine Crawford, 1994, « Introduction, » in : Michael Clark and Catherine Crawford eds, *Legal Medicine in History,* Cambridge : 2.

12. On this aspect of early legal reforms in Egypt, see Nathan Brown, *1997,The Rule ofLawin theArab World : Courts in Egypt andthe Gulf,* Cambridge : 11-15.

13. Hassanaineal-Besumee, 1838, *Egypt Under MuhammadAlyBasha,* London : 10. Al-Besumee was one of the students whom Mehmed Ali had sent to Britain and who was obviously commissioned to write this pamphlet in order to curry favor with the British public and to argue his patron's case in London. For a recent analysis of al-Besumee and his aims in writing this pamphlet, see 'Abd al-Khâliq Lâshîn, 1993, *Misriyyât fî-l-fikr wa-l-siyâsa,* Cairo : 55-71.

14. For an exhaustive survey of this law, see Rudolph Peters, « Mehmed 'Ali's first criminal code (1829-1830), unpublished paper.

15. Most notably *qânûn al-muntakhabât* during Mehmed Ali's reign (text in Jallâd, *Qûmûs al-idâra,* III : 351 -78) and *al-qânûn al-sultâni d*uring the reign of 'Abbâs. For a complete reproduction of *al-qânûn al-sultânî see* Zaghlûl, Appendix : 156-78 ; for an analysis of this law, see Rudolph Peters, The Origins of Pre-1883 Egyptian Penal Legislation, » paper presented to the 1996 Annual MESA Meeting, Providence, Rl, 21-24 November 1996 : 9-12 ; for the circumstances surrounding its promulgation see Gabriel Baer, 1969, Tanzimat in Egypt : The Penal Code, » in : Gabriel Baer, *Studies in the Social History of Modem Egypt,* Chicago : 109-133, and Gabriel Baer, 1977, The Transition from Traditional to Western Criminal Law in Turkey and Egypt, » *Studia Islamica* 45 :139-58.

16. Although there is no indication that there was a clear distinction between procedural and substantial law, nevertheless, a number of articles scattered in various laws and regulations formed the nucleus of procedural law and were often referred to in the rulings of the m*ajâlis.* See, for example, Articles 2 and 3 of Chapter 1 of *al-qânûn al-sultânî,* passed in 1850, regarding the prosecution of murder cases, and Article 6 of Chapter 3 of the same law on how to coordinate activities of the *siyâsî a*nd the *shar'J* investigating authorities (text in Zaghlûl, *al-Muhâmâh,* Appendix : 157-158,164, respectively) ; the *Sharî'a* Courts Ordinance *{lâ'ihat al-mahâkim al-shar'iyya)* (text in Jallâd, IV : 129-131) ; the September 1858 Five-Article Circular : *majlis al-ahkâm,* Reg. S/7/10/2 (old no. 664), Order without no., p. 32, 13 *safar* 1275/22 September 1858 ; reproduced in Sâmî, *Taqwîm al-Nîl, I*II, pt. 1 :297 ; *« Sûrat harakât al-afandiyya hukkâm al-shar' fî ijrâ' al-ahkâm al-shar'iyya »* (text in Jallâd, *Qâmûs al-idâra, II* : 104). See also Rudolph Peters, 1990, « Murder on the Nile : Homicide Trials in 19th Century Egyptian Shari'a Courts, » *Die Welt des Islams* 30 :101 ; and Peters, « Shari'a and the State : Criminal Law in Nineteenth-century Egypt, » unpublished paper.

17. The only complete study of the history of the Egyptian police is, unfortunately, the very inadequate one of 'Abd al-Wahhâb Bakr, 1988, *al-Bûlîs al-misrî,* Cairo. See also Toledano, State *and Society,* and Juan R. Cole, 1993, *Colonialism and Revolution in the Middle East : Social Origins of Egypt's 'Urabi Movement,* Princeton : 214-217.

18. On the history of this particular dispute, see Khankî, *al-Tashrî' wa-I-qadâ',* and Baer, Tanzimat in Egypt » : 33-37.

19. *Al-qânûn al-sultânî,* Chapter I, Articles 2 and 3, text in Zaghlûl, Appendix : 157-158.

20. *Majlis al-ahkâm,* box no. 1, document no. 9,27 *jumâdî 1126*5/12 April 1849. For a brief account of this very important administrative body, *majlis al-khusûsî,* see Robert Hunter, 1984, *Egypt Under the Khedives, 1805-1879,* Pittsburgh : 49-50.

21. For the text of the regulations, see Jallâd, *Qâmûs al-idâra,* II : 104. For an English translation see Peters, « Murder on the Nile » : 101.

22. For the duties of the graduates of this school see Khaled Fahmy, 1998, « Women, Medicine and Powerin Nineteenth-century Egypt, » in : LilaAbu-Lughod ed., *Remaking Women : Feminism and Modernity in the Middle East,* Princeton : 35-72.

23. Brenda White, Training Medical Policemen : Forensic Medicine and Public Health in Nineteenth-century Scotland, » in : Clark and Crawford eds., *Legal Medicine in History.* 45.

24. Antoine-Barthélémy Clot, 1949, *Mémoires, e*d. Jacques Tagher, Cairo : 70-73. For a diagram of the first anatomy lesson conducted on an open cadaver, see FM. Sandwith, 1901, The history of Kasr-el-Ainy, » *Records of the Egyptian Government School of Medicine, I.*

25. The registers of the Qasr al-'Aynî Hospital contain countless reports of autopsy examinations that were routinely conducted on corpses received from the Cairo Police *(dabtiyya). I* have found nine registers from the period 1261 -1278 A.H./A.D. 1845-1861, and eighteen registers covering the period 1280-1296 A.H/A.D. 1863-1879. The first group has the title : *dîwân al-jihâdiyya : sâdir shûrâ al-atibbâ' ;* while the second bears the heading : m*uhâfazat Misr. sâdir riyâsat al-sbitâliya.* They have the code : L (Arabic « Iâm »)/1/4. Though belonging to different archival units, they complement each other and should be incorporated together to form one series.

26. The first medical book published in Egypt dealt with dissection, *al-Qawl al-sarih fî'ilm al-tashrih,* trans. Yûhannâ 'Anhûrî (Cairo : Bûlâq, 1248 A.H/A.D. 1832). See also *Kitâb al-tashrih al-'âmm,* trans. 'Issawî al-Nahrâwî (Cairo : Bûlâq, 1251 A.H./A.D. 1835), and Clot Bey, *Usûl al-tashrih al-'âmm* (Cairo : Bûlâq, 1253 A.H./A.D. 1837).

27. On the structure of the public health services, see LaVerne Kuhnke, 1990, *Lives at Risk : Public Health in Nineteenth-century Egypt,* Cairo, Appendices 1 and 2 :. 167-177.

28. The records of the Department of Health Inspection of Cairo, *taftish al-sihha,* contain countless examples of petitions presented by such people to open their shops in Cairo. The answers to these petitions are also recorded. For those concerning butchers and slaughterhouses, for example, see the petition presented by some butchers to open shops in al-Rumayla Street : m *uhâfazat Misr,* Reg. L/1/5/1(old no. 183), letter no. 199, from *taftîsh al-sihha* to *al-dabtiyya,* p. 183,18 *muharram 1277*/6 August 1860. The response is in *ibid.,* letter no. 206, p. 185, on 25 *muharram* 1277/13 August 1860. When Ibrâhîm Muhammad al-Jazzâr was discovered by the *taftish* to have opened his butchery without a permit, the *dabtiyya* was promptly informed to arrest him and have his shop closed ; *muhâfazatMlsr,* Reg. L/1/5/2 (old no. 185), letter no. 130, p. 132, on 29 *shawwâl* 1277/10 May 1861. When the meat sold by 'Abd al-Hâdî al-Ghâyâtî al-Jazzâr in his butchery was inspected and found unsuitable for human consumption, he was sent to the *dabtiyya* for questioning. A sample of the meat was also forwarded by the *taftîsh. ibid.,* letter no. 169, p. 158, on 12 *muharram* 1278/20 July 1861.

29. The information on the Cairo slaughterhouses is as fascinating as that of its butcheries. See the interesting order by Ismâ'îl approving an earlier decree by m*ajlis al-khusûsî to* open two slaughterhouses in Cairo, one in the north and the other to the south ofthe city, where all slaughtering was to be done : *diwân al-dâkhiliyya, qayd al-awâmir al-karîma,* no. 1315, Order no. 74, p. 21, on 4 *safar 128*5/27 May 1868. For the filthy condition of the northern 'Abbâsiyya slaughterhouse ten years after its foundation, see *dabtiyyat* Misr, Reg. L/2/31/1, letter no. 197, p. 141, on 12 *dhû al-qi'da* 1296/28 October 1879.

30. For an example of a team of regular health inspectors who discovered five tanneries within Cairo and who gave their owners sixty days to relocate outside the city, see muhâf*azat* Misr, Reg. L/1/5/2/ (old no. 185), letter no. 135, p. 135, on 5 *dhû al-qi'da* 1277/15 May 1861.

31. For an idea of how meticulous the authorities were in recording this data, see the registers recording the daily statistics of the dead in Cairo (apparently compiled from information supplied by the undertakers and not by the health officers) : *bayt a-Mât, dafâtir qayd al-Amwât,* G (Arabic « jîm » /2/1/1, covering the period 1844-1880.

32. There are various letters and correspondences about this delicate matter. See, in particular, the health blueprint drawn up by Drs. Purgeur, Colocci and Martini to revise the health administration of Cairo. *Diwân al-dâkhiliyya,* Reg. 1320 *[daftarqaydal-awâmir),* Order no. 35, p. 9-11, 16 *shawwâl* 1289/17 December 1872. See also 'Alî Mubârak, *al-Khitat ai-tawfîqiyya al-jadîda li-Misr at-Qâhira,* 2nd ed. (1969 ; rpt. Cairo, 1980), I :217.

33. See note 32 above.

34. See the case of *shaykh* Ahmad who was buried near a mosque inside the city. When the relatives and the undertaker were questioned, they said that they had obtaineda permission from *dîwân* Katkhuda which functioned as a ministry of the interior. The *taftîsh* wrote to this *dîwân* imploring its officials not to issue such permits in the future and reminded them that health regulations forbade these burials, « regardless of the social standing of the deceased » : *dîwân* Katkhuda, Reg. M/5/2 (old no. 167), letter no. 19, on 27 *rabî'*1268/31 December 1851. See also the interesting, but much later, case of the European who died and was buried within the city without notification of the Department of Health Inspection (the *taftîsh).* When this was discovered, an investigation was conducted, the relevant consulate was informed, and the culprit was punished : *dabtiyyat* Misr, Reg. L/2/31/1, letter no. 287, p. 76,13 *ramadan* 1296/15 August 1878.

35. *Muhâfazat* Misr, Reg. L/1/5/2 (old no. 185), letter no. 6, p. 37, 7 rabî'll 1277/23 October 1860.

36. *Muhâfazat* Misr, Reg. L/1/20/8 (old no. 1108), case no. 6, p. 19-24, on *rabî'W* 1278/15 October 1861.

37. *Dîwân al-jihâdiyya, daftar qayd al-madhâbit-majlis 'askariyya,* Reg. no. 2542, case no. 19, p. 42-44, on 10 *dhû al-qi'da* 1296/4 March 1878.

38. *Dîwân al-jihâdiyya, qayd madhâbit al-'arabî bi-majlis 'askariyya,* Reg. 2538, case no. 47, p. 127-128, on 7 *rabî'W 1*294/21 April 1877.

39. *Muhâfazat* Misr, Reg. L/1/20/8 (old no. 1108), case no. 42, p. 108-109, 28 *shawwâl* 1278/28 April 1862.

40. *Majlis al-ahkâm,* Reg. S/7/10/1 [old no. 661], case no. 14, p. 4, on 10 *dhû al-qi'da 12* 74/22 June 1858. This and all subsequent archival material is from the Egyptian National Archives, *dâr al-wathâ'iq al-qawmiyya,* Cairo. Article Five of the Five-Article Circular published in September 1858 stipulated that any person found guilty of presenting false accusations should be punished by the same punishment that would have been passed on the defendant had the claimant succeeded in proving his case, instead of the previous sentence which was imprisonment for a period between five and forty five days : Amîn Sâmî, *Taqwim al-Nîl*),v. 3,pt.1,p. 297.

41. *Dabtiyyat* Misr, Reg. L/2/6/4 (old no. 2032), case no. 597, p. 45-47,21 *jumâdî I* 1295/27 May 1878. The police commissioner, naturally, could not convict the defenders ; he could only declare them guilty or not guilty leaving the duty of convicting and sentencing them to a higher authority, m*ajlis* Misr.

42. 'Alî Mubârak, *al-Khitat al-tawfiqiyya, 1* :229.

43. *Muhâfazat Misr,* Reg. L/1/5/1 (old no. 183), letter no. 150, from *taftîsh al-sihha* to *al-dabtiyya,* p. 147-148,18 *dhû al-qi'da* 1276/7 June 1860.

44. They were subsequently pardoned according to the general amnesty issued on 29 *jumâdî II* 1277/12 January 1861.

45. This is according to Article 7 of Chapter 5 of *aL-qânûn al-sultânî,* which states, « If a public official, regardless of his rank, does not follow regulations and decrees and this results in no damage, then he will be punished, according to his rank, by imprisonment from ten days to one

month in the provincial gaol. If, however, his violation of the decrees resulted in damage, then he is to be imprisoned in the said gaol from one month to six months, according to the degree of damage inflicted... » Quoted in Zaghlûl, *al-Muhâmâh,* Appendix : 176.

46. *Muhâfazat* Misr, Reg. L/1/20/5 (old no. 1043), case no. 36, p. 162-165, 18 *shawwâl* 1277/29 April 1861.

47. Péter Hanâk,1998, The Alienation of Death in Budapest and Vienna at the Turn of the Century, » in : *The Garden and the Workshop : Essays on the Cultural History of Vienna and Budapest,* Princeton : 98.

48. It is interesting to note that it took nearly three years to rectify the situation and to attach the area to one of the neighboring quarters and only after the Khedive had approved the recommendations in person. In fact, since it was discovered that around 15 000 residents lived there, it was decided not to attach the area to any existing quarter but to appoint a new doctor to oversee the whole medico-legal process ; see *ma'iyya saniyya, awâmir,* Reg. S/1/1/ 24 (old no. 1907), Khedival Order to *dabtiyyat* Misr no. 32, p. 80,13 *sha'bân 12*80/23 January 1864.

49. Kuhnke, *Lives at Risk* 80.

50. See Fahmy, « Women, Medicine, and Powei » : 58 and 71, n. 110.

51. They were given four months to find an alternative place that would conform to health standards : *dâkhiliyya,* Box no. 13, document dated 11 *rabi'*\ 1291/28 April 1874.

52. There was a diligent attempt to apply this uniformally. However, few exceptions were given to some notables who had managed to obtain an exemption order from the Khedive in person ; see the interesting case of a certain Celibi Efendi who managed to obtain an exemption from Ismâ'îl Pasha for his five-day old son to be buried inside the city. The *taftish* did not hide its dismay at such an exception coming from the Khedive : mu*hâfazat* Misr, Reg. L/1/5/2 (old no. 185), letterno. 178, p. 171 and 184,27 *safar 1278/4* September 1861. The other exception routinely granted was for the Coptic Patriarch to be buried in the Patriarchate in Azbakiyya : *ibid.,* letter no. 22, p. 84,19 Rajab 1277/1 February 1861 ; and muhâfazatMisr, Reg. L/1/5/11 (old no. 209), letter no. 10, p. 86,16 *shawwâl* 1286/19 January 1870.

53. Dî*wân al-jihâdiyya,* Reg. 440, document no. 179, p. 215, 20 *sha'bân* 1264/22 July 1848. The residents of Bûlâq were singled out in this decree, presumably because they had to march a long distance on the way to the cemetery, thus spreading alarm at the scale of the epidemic over large areas.

54. Kuhnke, *Lives at Risk.* p. 80.

55. Dîwân K atkhuda, *taftish sihhatal-mahrûsa :* M/5/1 (old no. 163), document no. 11, p. 16and 28, on 3 safar 1268/28 November 1851.

56. For the position of the women doctors in the health hierarchy, see Fahmy, 'Women, Medicine and Power. »

57. There is a consensus among the religious scholars on this : see Ibn Qudâma, *al-Mughnî, e*d. 'Abdallâh ibn 'Abd al-Muhsin al-Turkî and 'Abd al-Fattâh Muhammad al-Hulw (Cairo,n.d.),XII : 171-172.

58. This is according to Article 6 of Chapter 2 of *al-qânûn al-sultânî,* which states that « anyone who abducts a Muslim or a non-Muslim girl *(bint min banât al-muslimin aw banât al-milal al-ukhrâ)....,* is to be arrested, have his case reviewed by the local *majlis,* and, if convicted, punished...by six months' imprisonment. » Text in Zaghûl, Appendix : 162.

59. *Majlis al-ahkâm,* Reg. S/7/10/1 (old no. 663), case no. 140, p. 62, 23 *dhû al-hijja* 1274/4 July 1858.

60. For a remarkably similar case, see *majlis al-ahkâm,* Reg. S/7/10/4 (old no. 666), case no. 538, p. *3,5 jumâdî Il 127*5/10 January 1859.

61. *Muhâfaz Mist,* Reg. L/1/20/5 (old no. 1043), case no. 6, p. 11, 25 rabî'll 1277/ 11 November 1860.

62. *Basir,* which literally means « sighted, » was sometimes used to refer to the blind in Mamluk Egypt : Fedwa Multi-Douglas, 1989, *« Mentalités* and marginality : Blindness and Mamlûk

Civilization, » in : C. E. Bosworth et al. eds, *The Islamic World from Classical to Modem Times : Essays in Honor of Bernard Lewis,* Princeton : 220.

63. Hânim was called Hânim bint fulân, not Hânim umm fulân ; she was probably the older, childless wife.

64. *Muhâfazat* Misr, Reg. L/1/20/5 (old no. 1043), case no. 30, p. 150-151, 15 *shawwâl 12* 77/26 April 1861. The *iplikkhâne* was a textile workshop for convicted women, located in Bûlâq.

65. Peters, « Murder on the Nile » : 100-101.

66. On the differences between these two aspects of Islamic legal thought and practice see, Jûrgen Nielsen, 1985, *Secular Justice in an Islamic State : Mazâlim Under the Bahrî Mamlûks, 662/1264-789/1387,* Leiden : 25-32. On the functioning of the *qâdî* courts in seventeenth-century Ottoman Egypt, see Nahal : 28-31.

67. For details on how these m*ajâlis shar'yya* functioned in homicide cases, see Peters, « Murder on the Nile. »

68. This was in accordance with the laws being applied at that time : see *ibid. : 102*, n. 13, where Peters says that this was contrary to Ottoman practice.

69. See, for example, Farhat Ziadeh, 1968, *Lawyers, the Rule ofLaw and Liberalism in Modern Egypt,* Stanford : 18.

70. Peters, The Origins of Pre-1883 Egyptian Penal Legislation : 13.

71. Muhammad al-Shubâsî, translation, *al-Tanqîh al-wahîd fî al-tashrîh al-khâs al-jadîd,* 3 vols (Cairo : Bûlâq, 1266 AH /AD 1850). The book was rendered into lucid and beautiful Arabic by Muhammad ibn 'UMar al-Tûnisî and Salîm 'Awad al-Qanayâtî ; the Bûlâq Press, however, could not reproduce the wonderful illustrations of the original French work, which remain unrivaled in the history of medical illustration. Cruveilhier's book was published in two volumes in 1829.

72. Muhammad al-Shubâsî, *al-Tanwîr fî qawâ'id al-tahdîr* (Cairo : Bûlâq, 1264 AH [1848 AD]). The biographical information is from p. 4-5 of the second preface. The number of copies printed is from *dîwân al-jihâdiyya,* Reg. 437, document no. 54, p. 51, 6 *dhû al-hijja* 1262/1 December 1846.

73. *Al-Tanwîr,* second preface : 5.

74. *Ibid :.* 434.

75. *Ibid. :* 443.

76. For further elaboration on this theme see Khaled Fahmy, The Anatomy of Justice : Forensic Medicine and Criminal Law in Nineteenth-century Egypt, » *Islamic Lawand Society* (forthcoming).

77. *Majlis al-ahkâm,* Reg. S/7/10/1 (old no. 663), case, no. 75, p. 33, end of *dhû al-qi'da* 1274/12 July 1858.

78. Ahmad Amîn, 1953, *Qâmûs al-'âdât wa-l-taqâlîd wa''l-ta'âbîr al-misriyya,* Cairo : 23.

79. *Muhâ(azat Misr,* Reg. L/1/20/8 (old no. 1108), Order no. 3, p. 71-73, on 11 *sha'bân* 1278/11 February 1862.

80. On the class background of the public health establishment in nineteenth-century Egypt and the ethnic tension that characterized its relations with the bureaucracy at large, see Fahmy, « Women, Medicine and Power » : 52-54.

INDEX

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